Third District Court of Appeal

State of Florida

Opinion filed July 10, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-1787
Lower Tribunal No. 18-4718

Miami Marlins, L.P. and Marlins Teamco LLC,
Appellants,

vs.

Miami-Dade County and The City of Miami,
Appellees.

An Appeal from non-final orders from the Circuit Court for Miami-Dade County, Beatrice Butchko, Judge.

Holland & Knight and Scott D. Ponce and Brian W. Toth; Proskauer Rose, LLP, and Matthew H. Triggs and Peter D. Doyle and John E. Roberts and Matthew I. Rochman (Boca Raton), for appellants.

Abigail Price-Williams, Miami-Dade County Attorney and Jorge Martinez-Esteve and Monica Rizo Perez and Ryan Zagare, Assistant County Attorneys; Victoria Méndez, City Attorney and John A. Greco, Deputy City Attorney, for appellees.

Before SALTER, SCALES and MILLER, JJ.

SALTER, J.

Miami Marlins, L.P. ("Selling Marlins"), and Marlins Teamco LLC ("Buying Marlins"), appeal a preliminary injunction in favor of Miami-Dade County ("County") and the City of Miami ("City"), and an order denying the appellants' motion to stay a circuit court case pending arbitration. We have jurisdiction over each of these non-final orders under Florida Rule of Appellate Procedure 9.130(a)(3)(B) and 9.130(a)(3)(c)(iv),[1] respectively. The dispute among the parties involves the County's and City's contractual right to receive a "County/City Equity Payment," five percent of the net sales proceeds attributable to the increased value of the Miami Marlins baseball franchise, if any, produced by the 2017 sale of the Marlins.

Based on the arbitration clause and related terms of the agreements among the parties, and reliant on well-settled precedent, we reverse the trial court's order, vacate the injunction, and remand the case to the trial court to abate further proceedings in deference to the claims of the parties in arbitration. In doing so, we recognize that the existing circuit court case provides a judicial proceeding available

[1] The trial court indicated an intention to defer a decision on arbitrability, but the denial of the appellants' motion to stay the circuit case pending arbitration is in substance an abrogation of the arbitrator's exclusive and so-called "gatekeeper" jurisdiction. See K.P. Meiring Constr., Inc. v. Northbay I & E, Inc., 761 So. 2d 1221, 1222 (Fla. 2d DCA 2000) (finding appellate jurisdiction regarding a trial court's denial of a "motion to stay pending arbitration" because "the real thrust of the motion was to compel arbitration of the underlying dispute").

for the enforcement of "a subpoena or discovery-related order for the attendance of a witness within this state," after abatement, should the arbitrators find it necessary to seek such relief. § 682.08(7), Fla. Stat. (2018).[2]

I. Facts and Procedural History

The Selling Marlins owned and operated the Miami Marlins Major League Baseball club (the "Team") from 2002 to 2017. In April 2009, the Selling Marlins entered into contracts with the County and City regarding the construction and operation of a new baseball stadium and related public infrastructure.

As an inducement to the County and City to provide what proved to be highly-controversial public funding, the Selling Marlins agreed, among other things: (a) not to relocate the Team during the term of the agreements; (b) to change the name of the Team from "Florida Marlins" to "Miami Marlins" and to retain that name during the term of the agreements; (c) to use the new stadium, when completed, as the Team's home field; and (d) to pay to the County and City (ratably according to their contributions and expenditures), a specified percentage of the "Net Proceeds" of the sale or change of control of the Team and the Selling Marlins'

[2] The abated proceeding may also be the forum for the arbitrators to obtain provisional remedies (section 682.031(2)(b), Florida Statutes) or other relief from the circuit court to the extent authorized by the Revised Florida Arbitration Code, Chapter 682.

assets, attributable to any increase in value of the franchise above $250,000,000 (subject to adjustments, the "County/City Equity Payment").

In October 2017, the Buying Marlins purchased the Team and related assets from the Selling Marlins for $1,200,000,000. The present dispute between the County and City as plaintiffs in court or claimants in arbitration, and the Selling Marlins and Buying Marlins as defendants or respondents, turns on the resulting computation of the County/City Equity Payment.

Following the sale, the Selling Marlins delivered to the County and City a letter and accountants' examination report purporting to show that the computation of the County/City Equity Payment, performed in accordance with the Non-Relocation Agreement, was zero. The report indicated that certain contractual adjustments and an escrow reduced the gross proceeds of the sale to $1,128,786,355.

The accountants' report subtracted an "[a]ssumed value of franchise" of $939,046,530 (versus the 2009 starting point of $250,000,000), transaction expenses of $33,372,635, and income tax to the Selling Marlins partners of $297,428,783, resulting in a purported loss on the sale ($141,061,593) and thus nothing for the County/City Equity Payment.

The County and City filed suit in the circuit court,[3] obtaining the injunction and denial of the motion to stay pending arbitration that are the basis of the present appeal. The Selling Marlins and Buying Marlins contended in the circuit court and here that the disputes pertaining to the County/City Equity Payment were required to be heard in the first instance by an arbitration panel as provided by the pertinent agreements.

II. Analysis

We review the denial of a motion to compel arbitration de novo. 13 Parcels LLC v. Laquer, 104 So. 3d 377, 379 (Fla. 3d DCA 2012). Arbitration provisions "are favored by the courts and . . . all doubts should be resolved in favor of arbitration." CT Miami, LLC v. Samsung Elecs. Latinoamerica Miami, Inc., 201 So. 3d 85, 90 (Fla. 3d DCA 2015).

The tests for compulsory, exclusive arbitral resolution of all disputes pertaining to the County/City Equity Payment are satisfied in the present case. Under Seifert v. U.S. Home Corp., 750 So. 2d 633 (Fla. 1999), there is a binding agreement to arbitrate, there are issues explicitly subject to arbitration, and waiver of the Selling Marlins' right to arbitration is not an issue.[4]

[3] The Selling Marlins and Buying Marlins attempted to remove the case to federal court in Miami, but the case was remanded to the circuit court five months later.

[4] The City and County contend that the Buying Marlins waived the right to arbitration. We disagree. The Buying Marlins' silence during the hearings on the

Two of the 2009 transactional documents are pertinent here: the "Non-Relocation Agreement" and the "Operating Agreement."

A. The Non-Relocation Agreement Arbitration Provision

After providing for the County/City Equity Payment as a percentage of defined Net Proceeds, the Non-Relocation Agreement in section 6 provides for the arbitration of "any disagreements":

> The Team shall cause its independent accountants to provide the County and City a reasonably detailed calculation of the County/City Equity Payment (on a combined basis) under this Section 6, including a detailed calculation showing the assumed value, Net Proceeds and any other calculations the Team used to determine the amount payable, as promptly as practicable following any applicable sale. If the County or City do not provide a notice of objection within thirty (30) days after receiving the accountant's calculation, such calculation shall be final and binding and payment of any amount due shall be made not later than thirty (30) days after the expiration of such period. If the County or City does provide notice of objection, it shall specify in reasonable detail the basis for its objections. The objecting Government Party and the Team shall then seek to resolve **any disagreements** between them within the succeeding period of sixty (60) days. If the objecting Government Party and the Team are unable to resolve the dispute within such sixty (60) day period, each of them shall have the right to commence arbitration in accordance with the Operating Agreement. If the arbitrator shall enter a final, non-appealable order requiring payment from the Team under this Section 6, the Team shall pay such amount within thirty (30) days thereafter.

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motion for injunction is indicative of deference to the primary and original obligors' (the Selling Marlins') unequivocal motions to compel arbitration and to stay the judicial proceeding from the outset, and not to any action by the Buying Marlins "inconsistent[] with the arbitration right." Raymond James Fin. Servs., Inc. v. Saldukas, 896 So. 2d 707, 711 (Fla. 2005) (citation omitted).

(Emphasis provided).

"Any" is not a difficult word to apply; as used here, any disagreement about the computation, the scope and completeness of the documents provided or relied upon, the level of detail provided in a party's objections, or the timeliness of objections or delivery of information—all such disagreements are subject to each party's right to commence arbitration in accordance with the Operating Agreement.[5]

Yes, hypothetically there could be a disagreement among the parties to the Non-Relocation Agreement completely unrelated to the calculation of the County/City Equity Payment—a change of the team's name, or an intentional breach of the agreement not to relocate the franchise to another city, for example. But of course those events have not happened, and those are not the disagreements detailed by the City and County in their circuit court complaint against the Selling Marlins and Buying Marlins.

Rather, the complaint's initial description of the lawsuit is that it "arises from the Marlins' refusal to pay the County and the City of Miami . . . the 5% equity

[5] In connection with the 2017 sale, the Selling Marlins and Buying Marlins signed a "Stadium Agreement Assignment and Assumption Agreement" whereby the Buying Marlins acquired the rights, and assumed the obligations, of the Selling Marlins under the Non-Relocation Agreement. Those obligations include the obligation to assure that the County/City Equity Payment is made, and that "any disagreements" regarding the computation are subject to arbitration per the Non-Relocation Agreement. The assignment and assumption did not relieve the Selling Marlins of their own obligation to honor the County/City Equity Payment provisions.

participation . . . that the Marlins promised to pay upon a sale of the . . . Miami Marlins." The causes of action are alleged to be violations of the "False Claims Act," the Florida Deceptive and Unfair Trade Practices Act, breach of contract, breach of the implied covenant of good faith and fair dealing, and for additional declaratory and injunctive relief, but these are all ultimately "disagreements" regarding: the allegedly and so-called "False Valuation"; "unconscionable" calculations; deceptive reliance on accountants who were not "independent"; "self-dealing" and "bad faith"; and breaches of the parties' written agreements.

That being so, all of these issues are subject to the arbitration provision and the right of the Selling Marlins to commence arbitration "in accordance with the Operating Agreement."

B. Article XVIII of the Operating Agreement: "Arbitration"

The Non-Relocation Agreement provides the contractual and mandatory right to arbitrate, but the incorporated arbitration provisions of the Operating Agreement provide important procedural details. The Operating Agreement was entered into by the City, the County, and the separate entity designated the "Operator" (Marlins Stadium Operator, L.P.). Nevertheless, the Non-Relocation provision states that arbitration of "any disagreements" relating to the County/City Equity Payment is to be "in accordance with" the arbitration provision of the Operating Agreement.

The County and City, of course, accepted those arbitration provisions (Article XVIII) of the Operating Agreement when they signed it in 2009. Those provisions include: (1) the requirement that a dispute "shall be submitted to, and resolved **exclusively and finally** through," the arbitration process described in section 18.1 (emphasis provided); (2) administration of the dispute under the Commercial Arbitration Rules of the American Arbitration Association ("AAA"); and (3) specifications regarding the selection and composition of the three-member panel of arbitrators. Other provisions specified the location for the arbitration (Miami, Florida), the timing for resolution, and the binding effect of any award.

Importantly, the express agreement to proceed under the Commercial Arbitration Rules of the AAA included Rule 7, "Jurisdiction," including subparagraph (a) of that rule:

> (a) The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the **arbitrability of any claim or counterclaim**.

(Emphasis provided).

In the abundant Florida and federal case law[6] pertaining to the threshold decisions arising between judges and arbitrators regarding the scope of their respective jurisdictions, this AAA rule makes the arbitration panel the gateway for

[6] The agreements before us specify that Florida law governs.

determinations regarding arbitrability. See Glasswall, LLC v. Monadnock Constr., Inc., 187 So. 3d 248, 251 (Fla. 3d DCA 2016). More recently, the United States Supreme Court has held, "[w]hen the parties' contract delegates the arbitrability question to an arbitrator, a court may not override the contract." Henry Schein, Inc. v. Archer & White Sales, Inc., 139 S. Ct. 524, 529 (2019).[7]

III. Conclusion

Based on the express language of the contracts, the nature of the disputes identified in the City and County complaints, and applicable precedent, we reverse and vacate the injunction and the order denying a stay pending arbitration. We remand the case so that the City and County may file their claims in arbitration, should they elect to continue to dispute the information and report provided to them by the Selling Marlins (and on behalf of the Buying Marlins).

In doing so, we are neither requiring nor prohibiting subsequent action by the trial court in the abated circuit court proceeding, if and to the extent requested by the arbitral panel, to "enforce a subpoena or discovery-related order for the attendance of a witness within this state . . . upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost effective," section

[7] In fairness to the trial court, Henry Schein, Inc. was decided well after the orders under review in the present case were issued.

682.08(7), Florida Statutes, or for other relief sought by the arbitrators under Chapter 682.